No. 87-1225

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

CHERRY HILL TOWNSHIP, Petitioners

VS.

CAMDEN COUNTY BOARD OF TAXATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AARON D. DENKER, ESQ.
Rt. 38, P.O. Box 227
Mt. Laurel, NJ 08054
(609) 234-2233
Atty for Petitioners

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QUESTION PRESENTED

1. Whether the Order issued to the Township of Cherry Hill, a Municipality within the County of Camden, State of New Jersey, to complete a municipal revaluation is Constitutionally valid under the Equal Protection Clause of the United States Constitution.

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This Petition of Certiorari arises out of the New Jersey Supreme Court's refusal to review the validity of a revaluation Order issued by the Camden County Board of Taxation against the Municipality of Cherry Hill, County of Camden, State of New Jersey.

OPINIONS BELOW

The opinion of the Tax Court of New Jersey (App. A) is not reported. The opinion of the Superior Court of New Jersey-Appellate Division (App. B) is not reported.

JURISDICTION

The judgment of the tax court of New Jersey (App. A) was entered on August 8, 1985. Petitioner appealed to the Appellate Division of the Superior Court of New Jersey and Judgment of the Appellate Division was entered on October 9, 1986 (APP. B.) reaffirming the lower court's decision. A timely Petition for Certification was denied by the Supreme Court of New Jersey (App. C) on May 29, 1987. On August 18, 1987, Mr. Justice Brennan extended the time for filing petition for Writ of Certiorari

to and including October 26, 1987. (App. D). The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The **Fourteenth Amendment** of the United States Constitution provides in relevant part:

> No State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

The Petitioner, Cherry Hill Township, is a municipality located within the County of Camden, State of New Jersey. The Petitioner, Township of Cherry Hill was ordered to complete a Municipal revaluation to be completed on or before September 30, 1986 and which was to be effective for the tax year 1987. This Order was approved by John R. Baldwin, Director of the Division of Taxation. (App. E).

Petitioner, Cherry Hill Township sought to appeal this Order and this Appeal was heard in the Tax Court of New Jersey on July 29, 1986 and July 30, 1986 before the Honorable Marvin N. Rimm, J.T.C.

The Petitioner's expert, Joseph Zerbo, the Municipal Tax Assessor of the Township of Cherry Hill, testified that a Municipal Assessor is made aware of the need for a revaluation, by notification in the form of an Order from the County Board, studies of sales that have taken place in the District, as well as any major zoning changes or other economic trends that

would cause a great deviation between market value and assessment. (T-34, L-25). Mr. Zerbo further testified that as a result of such notification of that Order, he had reviewed the assessments of several parcels in Cherry Hill. Such review also included the addition to the coefficient of deviation, sales of real estate and any identifiable economic trend that might of have taken place since the last revaluation. (T-36, L-11). It is uncontroverted that the deviation between sales value and assessment value which is known as the coefficient of deviation was 15.09%. (T-37, L-2). According to the **New Jersey Assessor's Handbook,** Sec. 801.31(1), it had been that whenever the coefficient of deviation exceeded 20% there was an indication that a revaluation was necessary. The recent publication of this handbook has now increased this number to 15%. (T-37, L-7). Cherry Hill is one of fourteen municipalities in the County of Camden in 1984, whose coefficient is greater than 15%, with Cherry Hill being the least deviated among them. (App. F)

Based upon his experience, the expert that testified concluded that there did not presently exist the sufficient capacity to perform a meaningful revaluation in Cherry Hill and that all deviations heretofore to be in existance are in fact marginal and therefore, do not warrant the enormous costs to the taxpayers, where all of the indications are that similar deviations exist post-revaluation. (T-37, L-20). This type of revaluation has not been instituted on other municipalities in

the County of Camden.

The Honorable Marvin N. Rimm, J.T.C. held that the revaluation Order, approved by the Director of the Division of Taxation, valid and proper and thereby afffirmed on or about August 8, 1985. The petitioner thereafter appealed to the Superior Court of New Jersey, Appellate Division, who affirmed substantially for the reasons expressed by Judge Rimm in his oral opinion of the facts and circumstances surrounding the incident which came to trial on or about July 30, 1985. The Superior Court of New Jersey denied Petitioner's Petition for Certification on May 29, 1987.

REASONS FOR GRANTING THE PETITION

Although it has traditionally been the province of the highest State Court to decide whether or not the method pursued in the assessment of taxes is in conformity with the law, the Supreme Court of the United States will decide for itself the character of the tax imposed and whether it infringes a Constitutional Right. **Storaasli vs. Minnesota,** 283 U.S. 57, 51 S. Ct. 354.

The basic question presented in this matter is whether an Order issued to the Township of Cherry Hill to complete a municipal revaluation conforms with the Equal Protection Clause of the United States Constitution.

The **Fourteenth Amendment** to the United State Constitution provides that "no state shall make or enforce any law which shall deny to any person within its jurisdiction the equal

protection of the laws." Under this doctrine, it is unlawful for a body of government to classify a group and treat them differently without a legitimate reason. Contrary to this doctrine, the respondents, the Camden County Board of Taxation, did so by unconstitutionally treating the residents of the Municipality of Cherry Hill differently than those residents of Municipalities similarly situated.

Cherry Hill Township is a community undergoing rapid change and development causing dynamic growth in commerce and housing. The Township contains 23,019 line items, including a recently renovated state-of-the-art race track, large industrial properties, vast office buildings, small commercial properties, housing developments and vacant lots. Since Cherry Hill is composed of some 800 commercial properties including a large shopping mall, approximately 17 to 18 high rise apartment buildings and numerous housing communities exist within its borders. These aspects make Cherry Hill a community which attracts affluence, opportunity and enterprise. The Township, as a result, contributes substantial revenues to the County of Camden through various taxes.

The Township of Cherry Hill is not the only district experiencing this growth in Camden County. The various districts surrounding it are also developing much the same way as Cherry Hill. The Township's attractiveness and commerce affects the surrounding communities. Most other

Townships in Camden County have equally benefitted from the dynamism of Cherry Hill as well as having the facilities to experience their own growth independent of Cherry Hill. Although Cherry Hill is an outstanding community, there are many other districts in Camden County which are also prosperous and well developed.

The deviation between sales value and assessment value of property known as the coefficient of deviation was 15.09% for the Township of Cherry Hill in 1984. According to the **New Jersey Assessor's Handbook,** section 801.31(1), it has been the director's recommendation in the past whenever the coefficient of deviation exceeded 20% there was an indication that a revaluation was necessary. In 1984, the figure was decreased to 15%. The Board ordered a revaluation of the Township of Cherry Hill because it deviated by .09% but did not do the same to the other 13 municipalities in the county whose figures all deviated greater than that of Cherry Hill. Due to Cherry Hill's fortunate prosperity and the affluence of its residents, the Camden County Board of Taxation selected the Township to undergo a revaluation to create greater revenue for the County, claiming that it was necessary because the deviation was above 15%. However, the Board failed to implement the same policy to surrounding communities with greater deviations thus making it unconstitutional. To penalize a group of taxpayers who happen to be wealthier as a whole is not legitimate reason for treating them differently from groups

similarly situated. The **Fourteenth Amendment** ensures this group equal treatment with other taxpayers residing in a community whose deviation figure exceeds that of .09% and prosperity is not a legitimate reason to thwart that doctrine.

The laws of the State of New Jersey under which Camden County exists, reinforces the purpose of protecting its citizens from disparate treatment. The Court stated in **Middlesex County Board of Taxation vs. Board of Sayreville,** 133 N.J. Super 44 (A.D. 1975), that "the purpose of total revaluation is to achieve tax equality not only as to any given taxing district but also between municipalities of the same County."

In **Willingboro vs. Burlington County Board of Taxation,** 62 N.J. 203 (1973), the Supreme Court held that a county board of taxation must uniformly apply "substantially similar data and a common standard to all taxing districts in the County." The court went on to state that "county boards should not make separate decisions or accord different treatment concerning non-revalued and revalued districts independent of each other, since the interrelated effect of each of these decisions affects the proportionate county tax burden of all the districts." **Id.** at 221.

Consequently, the newly ordered municipal revaluation of Cherry Hill will result in depriving its residents of equal protection under the laws of the United States because they will be placed in a worse position than citizens of other municipalities within the County of Camden.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

By: AARON D. DENKER
Attorney for Cherry Hill Township

DATED: October 23, 1987

Judgement

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TAX COURT OF NEW JERSEY

DOCKET NO. 04-16-1702-85-OR

CHERRY HILL TOWNSHIP,

Plaintiff,

v.

CAMDEN COUNTY BOARD OF TAXATION,

Defendant.

Civil Action

JUDGMENT

This matter being tried before the Honorable Marvin N. Rimm, J.T.C., on July 29 and July 30, 1985, and the Court having heard the testimony of witnesses and having considered the factual record and having rendered an oral decision from the bench on July 30, 1985, and further good cause appearing,

IT IS on this 8th day of August, 1985,

ORDERED AND ADJUDGED that the order issued by the Camden County Board of Taxation on February 6, 1985 and approved by the Director of the Division of Taxation on March 18, 1985 ordering the defendant and its appropriate officials to implement a municipal-wide revaluation effective for the 1987 tax year is deemed valid and proper and is hereby affirmed.

MARVIN N. RIMM, J.T.C.

the basis of a letter written by Mr. Haushalter to Mr. Segal, a copy of which was sent to me. In addition to that there has been a recent Appellate Division decision, which dealt with revaluations. Under all those circumstances I'm prepared to decide this case today, and I'm going to recess for some time, not a very long time, so that I can review these notes and get my thoughts in order, and I'm going to come back and announce my decision this morning. I would appreciate it if counsel would either remain in the Courtroom or close to the Courtroom so that my clerk can find all of you when I'm ready to come back into the Courtroom. All right, gentlemen, thank you very much.

(Recess)

COURT: All right, gentlemen, I'm prepared to advise you of my determination in this matter. This m atter is presently before the Tax Court on a complaint filed by the plaintiff, Cherry Hill Township against the defendant Camden County Board of Taxation, by which the Township in a timely manner, contests an action taken by the Camden County Board of Taxation. That action is an order to implement a municipal-wide revaluation dated February 6th, 1985 by which the Camden County Board of Taxation ordered the Township and its tax assessor to implement a municipal-wide revaluation to be completed by September 30, 1986, and to be effective for the 1987 tax year. In its complaint, the Municipality contends

that the revalation does not have a vactual basis, and that the defendant acted in an arbitrary and capricious manner. And that the order directing the revaluation should be set aside by this Court and the Municipality not required to implement a municipal-wide revaluation. I wish to dispose of one or two minor housekeeping matters first, which may be repetitious. But for the record, as I have already directed you to do, Mr. Segal, I direct you again to submit a five day order denying Mr. Haushalter's motion to dismiss the complaint for failure to answer interrogatories. I also direct you in a separate order, Mr. Segal, to provide for the denial of Mr. Haushalter's motion to dismiss for failure of the Municipality to properly adopt a resolution authorizing the initiation of this litigation. Indeed, as a result of the facts given to me yesterday, and the law urged upon the Court by Mr. Haushalter yesterday, I am satisfied that Cherry Hill Township did not act in a proper manner. I reject, Mr. Segal, out of hand, the proposition that the Mayor had authority to authorize this litigation, or that the Director of the Law Department had authority to initiate this litigation. But as I indicated yesterday, and as a result somewhat of Mr. Haushalter's comments, I believed that the best manner of proceeding would be to get to the merits of this case. So while I am denying Mr. Haushalter's motion, Mr. Segal, to dismiss for failure to properly authorize the litigation,

I want you to know that I do not accept that as an indication — I do not wish you to accept that as an indication of my understanding of the law. And in the future I would not hesitate to dismiss actions instituted by Cherry Hill Township if they were not properly authorized in accordance with the law. And that law was set forth to you yesterday in some detail, Mr. Segal. I will turn now to the merits, and I will tell you initially, so that there is no need to delay the knowledge of the determination. And that is that Cherry Hill Township will be ordered to implement a municipal-wide revaluation in accordance with the order of Feburary 6, 1985 entered by the Camden County Board of Taxation. And it is the judgment of the Court that a municipal-wide revaluation will be implemented by the Municipality and by the assessor to be effective for the tax year 1987 in accordance with the Camden County Board of Taxation order. And Mr. Haushalter is directed to prepare and submit a judgment of this Court to that effect, under the five day rule. There are some preliminary observations which are necessary to be made. Before I turn to what I believe is a necessary explanation, an exposition of my reasons for the conclusion I have reached today. I have had occasion to deal with a number of revaluation orders entered by various county boards of taxation. The most famous of which at this time, is obviously the revaluation of the City of Atlantic City. In

each instance that I have dealt with a revaluation order, in Atlantic County, in Ocean County that I canr ecall specifically, and now in Camden County, it has struck me that the obvious reason for the reluctance on the part of the municipal officials to properly perform their statutory and constitutional obligations was a matter of political inexpediency. I understand the realities of political life, and I understand that members of the governing body of a municipality, any municipality, and members of the administration of a municipality, any municipality, particularly and obviously the mayor, are political creatures, and I don't mean that in a pejorative manner at all, who have to run for election and who have to be elected if they are to retain the power that they have through the political process and exercise it in what they perceive to be is in the best interest of the public. But when it comes to revaluations for the reasons which I'll explain in a moment, governmental officials, municipal governmental officials are all too prone to abandon their responsibilities. Indeed the statistics presented in this case, as I have indicated in questions asked of one or more of the witnesses, and as indicated on the record by the answers given by those witnesses, make it perfectly clear that a revaluation in this municipality will not doubt result in anger on the part of voters. And that anger will be directed toward the governing

body and towards the Mayor. And I note that for a reason I will also come to in a moment. But that's not the test, it seems to me, under which any elected official, notwithstanding the allure of acting under such test, but that is not the test under which any elected official should perform his sworn — his or her sworn duties. The test is what does the law require? What is the constitutional mandate? What are the statutory mandates, and in this instance what are the mandates of the properly adopted regulations which govern local property taxation in this State? The constitutional mandate is set forth in Article 8, Section 1, Paragraph 1A of the New Jersey Constitution, which provides as follows: "Property shall be assessed for taxation under general — under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein. And such real property shall be taxed at the general tax rate of the taxing district in which the property is situation for the use of such taxing district." There is, there are a number of statutory provisions in Title 54, which implement that constitutional provision. specifically N.J.S.A. 54:1-35.35 recites that "The Director of the Division of Taxation in the Department of the Treasury shall by rule, establish standards to be used in the valuation and

revaluation of real property to be used for assessment purposes, and shall be — and shall prescribe minimum qualification for firms, and individuals engaged in the business of valuing and revaluing all or designated portions of real property in a municipality under contract." And finally, of course, there are the regulations adopted in accordance with the Administrative Procedure Act, which have been testified to, and which prescribe the rules established by the Director of the Division of Taxation for revaluations and reassessments. Specifically N.J.A.C. 18:L12A-1.14, Subparagraph (B). Even given all of this statutory, constitutional and regulation requirements, the municipality urges in contending against the order of the Camden County Board of Taxation that there are two reasons at least on the b asis of which this Court should not order a revaluation in Cherry Hill Township. One reason is a reason based on the coefficient of deviation. The municipality argues that the general coefficienct of deviation last promulgated by the Director of the Division of Taxation and on the basis of which the director makes a determination to order a revaluation or not, is 15.09 per cent. The municipality says that the director's own standard suggests that a coefficient of deviation of fifteen per cent is acceptable, and since there is a coefficient of deviation which is so close to that accepted by the director, there is no reason to order a

revaluation in Cherry Hill. The argument on this point falls extremely wide of the mark. In the first place what the municipality overlooks is Mr. Adams's very careful explanation that the fifteen per cent is the upper limit, it's the outside limit, it's the top, it's the end, it's the edge of the cliff, it's not a goal to be sought for. It's a point when reached which indicates an unacceptable condition in the local property assessments in the municipality. In his testimony the assessor, and in his argument, the solicitor have turned around the meaning of the coefficient of deviation of fifteen per cent standard. They say it's acceptable; quite the contrary. Mr. Harris's (sic) testimony makes it perfectly clear that fifteen percent is not acceptable, it's the point when reached when in fact there is no point of return without a revaluation. Secondly, and I find this intriguing, and it is one of the reasons why I spend several moments on the political aspects of the revaluation, secondly, the municipality argues "We're not going to have a good revaluation anyway, so why bother?" I'm frankly chagrined at that argument, it's an argument which completely overlooks the constitutional provisions as delineated by, or pardon me, not as delineated, but as expanded on by **Switz vs. Middletown Township** 23 NJ 580 (1987) (sic) and by **Tri-Terminal Corporation vs. Edgewater Borough** 68 NJ 405 (1975) certiorari denied 425 United States 958

(1976) and **Piscataway Associates, Inc. vs. Piscataway Township** 73 NJ 546 (1977). The municipality has said there are 23,019 line items in Cherry Hill Township. The bulk of those line items are residential problems — residential properties, and maybe residential problems too — are residential properties which perhaps, for the most part will not create problems in a revaluation. But there are 853 commercial proeprties constituting approximately one-third of the ratable base, which are extremely difficult to value. And the municipality should not be put to the expense of appraising those properties in a revaluation process. I will comment now, before concluding, and I will go on for some time yet, my further explanation, I will comment now about a black cloud on the horizon which I envision, and with — and about which, Mr. Segal, I'm going to warn Cherry Hill Township. I envision that among other things, one of the reasons for Mr. Zerbo's testimony was to permit Cherry Hill Township someday in the future to come back into this Court, the Tax Court, not necessarily before me, and to say "You see, Judge, we told you we couldn't get a good revaluation," and I believe, I genuinely believe, Mr. Segal, based on my experience with Cherry Hill Township over the last five and a half years, that the Township will take every step possible to impede the implementation of the revaluation. I think the Township, either its assessor or its engineer or other

officials, will be obstructionists, and to the extent that the attorney general and the Camden County Board of Taxation conclude to do anything about it they will have the support of the Court, and I will not tolerate that. With the idea on the part of the governing body and the administration of the Township that a bad revaluation will prove them right, and perhaps blacken the eye of the attorney general or of the Camden County Board of Taxation or of this Court. So I will tell you now, Mr. Segal, that I expect the governing body and the administration of Cherry Hill Township to comply with the letter and the spirit of the judgment that I am directing Mr. Haushalter to prepare. I expect the Township's officials, its solicitor and the Law Department, its engineers, its assessors and all of the officials involved in the revaluation to cooperate to the fullest extent with the County Board, with the Director of the Division of Taxation and with the revaluation company. And I am hopeful, and I am particularly glad that a member of the Camden County Board of Taxation is here today, I am particularly hopeful that considering the size of Cherry Hill Township, its importance in the County, and indeed it may very well be the most important County today — most important municipality in the County today, and the size of its ratable base, that the County Board will supervise the revaluation very carefully. And that a word to the wise, Mr. Segal, will be sufficient,

and that the Township will, contrary to what I fear, cooperate a hundred per cent with everybody involved in the revaluation, and will, contrary to what I have said, make every effort to implement an effective, meaningful and fair revaluation, which will result in an equitable distribution of the tax burden among all the taxpayers. In the Switz case, in commenting on the requirement of the fair assessments required under our constitution, the Court said, "The standard of true value is but a means of realizing uniformity and equality. The pre-eminent consideration in the appointment of the tax burden, in virtue of the consitutional guarantees of due process, and the equal protection of the laws, or the rule of the State constitution of a radically different import, the equal protection clause fo the Fourteenth Amendment would prevail where the right of equal treatment thereby secured protects the individual from state action making for discriminatory imposts not laid on others of the same class," meaning all taxpayers. I cannot perceive how Cherry Hill can come into this Court and argue that its assessing practices as they exist today result in a fair sharing of the local property tax burden. I'm sure that all of you understand that I have no particular axe to grind, I am not in favor of these 853 commercial property owners, I have no idea who they are except as they appear before me in the Tax Court. I certainly have nothing against the twenty

thousand some odd residential property owners, but the law is very clear. The constitution mandates a fair distribution of the local property tax burden among all of the taxpayers; it doesn't say load it on the commercial property owners and ease up on the residential property owners, because the residental property owners vote, and the commercial property owners probably don't. But beyond that it's intriguing that revaluation not only result in a fair distribution of the tax burden between or among classes, but within classed. And I suggest that a revaluation will accomplish even among residential property owners, a fairer distribution of the tax burden so that those residential properties which should be assessed at higher amounts will be assessed at higher amounts, and those residential properties which should be assessed at lower amounts will be assessed at lower amounts, resulting in a much fair and more equitable distribution of the local property tax burden. I am acutely aware, as I already indicated, of the problems, the legal problems relating to revaluation, and I wish to expand somewhat on this constitutional requirement. The judgment entered as a result of my determination today, I regard as a judgment of constitutional proportions. Basing it as I do on the provisions fo Article 8, Section 1, Paragraph 1A of the New Jersey Constitution, and by way of further exposition I would direct the attention of the parties to the Trial Court

opinion in **Atlantic City Casino Association vs. Irwin I. Kimmelman** a copy of which will be made available to Mr. Segal if he does not already have one. In that Trial Court opinion I ruled that the moratorium effecting the revaluation in Atlantic City was unconstitutional as an improper intrusion by the legislature into the judicial area. I also said it should be noted that at the time of the hearing in this matter I declined to hold that Chapter 67, the subject statute, was unconstitutional and contravention of Article 8, Section 1, Paragraph 1A of the New Jersey Constitution. I did state, however, that it may be that the legislation is unconstitutional on the basis of that provision. And I added in a written opinion, written in anticipation of an appeal which follows, that Our Supreme Court decision in **Switz vs. Middletown Township** 23 NJ 580 (1957) may very well compel that conclusion. In any event my conclusion at the time of the hearing must not be understood to diminish in any way the importance and necessity of general revaluations at regular intervals, nor the force in effect to be given to an order of the County Board of Taxation directing a municipality to engage in general revaluation. In **Tri-Terminal Corporation vs. Edgewater Borough** 68 NJ 405 (1975) certiorari denied 425 U.S. 958 (1976), the Supreme Court referred to the planlessness in the chaotic local assessing practices discussed in in re appeals of **Kents 2124 Atlantic Avenue,**

Inc. 34 NJ 21 (1961) and the effect that the taxpayers' right to discrimination relief would have on improving assessing practices and encouraging frequent general revaluations. The Court said that quote, "In Kents, Chief Justice Weintrob expressly recognized that the taxpayers' exigency there presented could have been avoided if the taxing district had conducted periodic general revaluations of all ratables thorughout the district." He stated that if the remedy there granted provoked (End of Cassette #82-85. Cassette #83-85 continues) as feared, a flood of appeals, parenthetically one of the fears that Cherry Hill's assessor expressed, "This might well quicken the official conscience and induce the district to revalue and to keep the rules current. Even before Kents and spurred by such decisions mandating assessment at true value, as **Switz vs. Middletown Township** and **Ridgefield Park vs. Bergen County Board of Taxation** 31 NJ 420 (1960), the County Boards of Taxation began to actively influence taxing districts to regularly revalue. The requirement for frequent revaluations in the interest of satisfying the constitutional mandate of uniformity and equal treatment in tax assessing was also considered in **Piscataway Associates, Inc. vs. Piscataway Township** 73 NJ 546 (1977).* The Court recognized the difficulty that assessors would encounter in annually reviewing assessments and changing valuations were appropriate. And accordingly accepted the

efficacy of a general revaluation for the years immediately succeeding its effective date. However the vitality of this assumption dissipates with the passage of time. The Court noted that Piscataway had been revalued during 1974 for the tax year 1975, having previously been revalued for the year 1965, and said, quote, "It is to be hoped that it will do so in the future at shorter intervals than ten years. Only in that way can practical uniformity in assessments be achieved. It is therefore all too apparent that the goals of uniformity in assessments, according to the same standard of value as required by our constitution, cannot be effectively realized unless county boards of taxation order general revaluations on a frequent recurring basis. And municipal assessors comply with such orders. Therefore revaluation moratorium statutes may violate the tax uniformity provisions of the constitution." The Appellate Division, in dealing with that opinion, concluded that the moratorium legislation was not an improper intrusion and reversed my determination that the legislation was unconstitutional. Specifically declining to rule on the constitutional discussion relating to Article 8, Section 1, Paragraph 1A. The dissenting opinion of Judge Fritz is worth noting. "Although the basic purpose of this separately filed dissent is to record my respectful disagreement with the result reached by my colleagues, I announce at the outset that I disagree with

nothing said in the thoughtful opinion of Judge Gaulkin. My problem with the results springs from my conviction that a perfectly reasonable deep-seated concern for the extremely pressing problem which is unique to Atlantic City and is of major consequence, which concern incidentally, I wholly share, has caused us to come short of our obligation in the matter. Accordingly, while I cannot disagree with anything said in Section 5 of the majority opinion, I think that because of the immense importance of the principal involved, we should not avoid the issue on the basis of the trial Judge's having declined to decide it, and the parties only arguing the pros and cons of that which he did decide. As suggested by that which I've already said, I do not lightly come to disagree with my colleagues for whose judgment I hold a great deal of respect. For reasons which appear in the majority opinion, the Atlantic City situation is a thing to behold. The temptation simply to join in that opinion and forget about the whole thing is almost overwhelming, but as Justice Case noted in his concurrence in **Winberry vs. Salisbury,** quote, "In my opinion carefully reached there's greater danger to our democratic form of government in following the lure of expediency than in marking our course by the compass," I remain sorely afraid that here we are permitting hard facts to invest bad law with a good deal of confidence. The legal thesis underlying my difference with

the result reached by the majority is simple enough. As the majority points out, and for reasons explicated, patterns of assessment of Atlantic City have become non-uniform since the 1962 revaluation. Passage of the casino referendum exacerbated the situration. No one will dispute that the situation is completely out of conformity with the express controlling mandate of Article 8, Section 1, New Jersey Constitution 1947. In this situation the legislature has chosen to put this directive of the Supreme Court of the land on hold, clearly not for any partisan or political reason, but simply because of the compelling exigencies involved in the Atlantic City situation. I believe that for the legislature, or for this or any other Court thus to attempt to suspend operation of the constitution not only results in an unconstitutional foray, contrary to fundamental tenants of established law, but also in a most dangerous political situation. Because suspension of the constitution is to me such an unthinkable and dangerous precedent I would not avoid the probiem. I would affirm the declaration of unconstitutionality by the trial Judge, but in complete concurrance with the majority in this respect, not for any of the reasons given by the trial Judge." Unlike the manner in which I handle the trial Court decision in the Atlantic City case, I am coming here to grips today, as have both parties directly with the constitutional provision which I have

quoted, namely Article 8, Section 1, relating to the uniformity of tax assessing. There can be no doubt that much of what Judge Fritz said applies to the present case, and the facts before the Court make it perfectly clear that the assessments as I believe one of the witnesses said, or perhaps I'm paraphrasing him, are all over the map. It's very difficult to perceive how a municipality can argue that its assessing practices are good when approximately sixty-one per cent of the usable sales fall outside the upper and lower limits of the common level range established by 123. And the point to be made in that regard is that one, the fifteen per cent coeffienct of deviation is not in any sense exclusive as a determining factor, and number two, it's at the upper extreme outside limit of consideration when evaluating what the assessment practices are. Beyond the consideration I've given to the testimony, I wish to make certain general observations concerning the nature of the proof presented by Cherry Hill Township. And for this purpose I am referring to the unpublished Appellate Division decision of the **Township of Maple Shade vs. Burlington County Board of Taxation** decided May 30, 1980, a copy of which opinion was given to Mr. Segal by Mr. Haushalter. Recognizing that unpublished opinions are not to be cited, I will refer to it anyway, because the principles to which I refer are clearly principles well established in the law and are supported by

ample authority in the opinion. The Township bore the burden of proving the order of the County Board was invalid by evidence which is definite, positive and certain in quality and quantity, **Passaic vs. Gera Mills** 55 NJ Super 73, Appellate Division (1959) certification denied, 30 New Jersey 153 (1959) quoting **Aetna Life Insurance Company vs. the City of Newark** 10 NJ 99 (1952), see also **Reading Company vs. Woodbridge Township** 45 NJ 407 (1965) in re Kents 34 NJ 21 (1961). Moreover, the County Board's order is entitled to a presumption of validity and correctness; see **Perth Amboy vs. Middlesex County Board of Taxation** 91 NJ Super 305 Appellate Division (1966), certification denied 48 NJ 112 (1966). In this case, as Mr. Haushalter has appropriately pointed out, in addition to the reasons I've given for the failure of the municipality to prove its case by my analysis of its evidence, the testimony of the assessor relating to the nature of the manner, to the nature or and the manner in which a revaluation will be accomplished, was only speculative, was without basis and was certainly not definite, positive and certain in quality and quantity. The Township did not sustain its burden of showing the order of the County Board to revalue was invalid. The record, and I'm reading here from the other, the Maple Shade case, the record discloses that the coefficients of deviation for the Township in several classes of property are well above the minimal

acceptable level, and indeed that was the testimony here given by Mr. Adams concerning the segmented coefficients of deviation. But I repeat that the coefficients of deviation are only one, only one factor to be considered. Another factor to be considered is that Cherry Hill has not been revalued since 1975, and essentially the same list of assessments has been filed each year since that time, notwithstanding that the ratio has steadily declined. The director's ratio for October 1, 1984 after being challenged by the Township, was 57.90 per cent, hardly acceptable in terms of the Camden County Board mandate of a hundred per cent of true value for assessment purposes. The class weighted ratios were class one, 66.39 per cent, class two, 49.67 per cent, and class four, 66.85 per cent. And I suggest that the Township in the presentation of its case has completely failed to appreciate the importance of a ratio of 57.90 per cent as indicating base assessing practices. For all of the reasons that I have given, as I've already indicated, a judgment will be entered that Cherry Hill Township will implement a municipal-wide revaluation by engaging an outside independent revaluation firm, in accordance with the statutes and regulations promulgated with regard to such revaluations, and in accordance with the directives of the Director of Division of Taxation. The revaluation to be implemented for the tax year 1987. Are

there any questions, Mr. Haushalter?

MR. HAUSHALTER: No, Your Honor.

COURT: Are there any questions, Mr. Segal?

MR. SEGAL: No, Your Honor.

COURT: Gentlemen, I wish to thank all of you for coming here today, I appreciate the cooperation in that regard evidenced by counsel and by the witnesses and by the other officials who are present here in Court. Incidentally, Mr. Segal, I would appreciate your introducing them to me if you don't mind.

MR. SEGAL: Yes, Your Honor. Councilman Denny Direnzo, (phonetic) Township of Cherry Hill.

COURT: Good morning, Mr. Direnzo.

MR. DIRENZO: Good morning to you, Judge.

MR. SEGAL: And this is Joe's associate, this is Joe's son, young Mr. Zerbo.

COURT: Mr. Zerbo, notwithstanding what I've said about assessing practices in Cherry Hill Township, the record should reflect that I believe that your father labors, seriously, under very extraordinary and difficult circumstances, and I suggest to him through you, that perhaps a revaluation would be the best thing that ever happened to him. I wish, Mr. Segal and Mr. Haushalter, to pursue only for a moment, something which I put into the opinion. I trust that all of you will understand that I do not mean

to beat a dead horse, but I am, Mr. Segal, very concerned that having ordered a revaluation, an effective, fair, equitable revaluation should be accomplished. I cannot tell you a force ure, I cannot tell you a priori I should say, what I will do, but I will, as I already have urged the County Board to monitor your activities, and upon application of the County Board through the attorney general representing the County Board, I will require whatever monitoring is necessary. At the same time, Mr. Segal, I wish the Township to understand that I'm not interested in making it difficult — making a situation, making a difficult situation even more difficult. If the Township needs assistance from the County Board, if the Township needs assistance from the Director of Division of Taxation, if the Township has problems, if the Township will come to this Court I will do what I can to help. I am not interested in laying Cherry Hill Township out, I believe that the County Board of Taxation will cooperate I believe that the Direction of Division of Taxation will cooperate, and I suggest to you here and now today, July the 30th, that if there is a bad revaluation it will Cherry Hill's fault and not someone else's. And my offer of help, I trust you understand, is a meaningful offer, and I suggest you may not even have to come to the Court; if you were to go to Mr. Haushalter or to the County Board or to the director through Mr. Adams, or through whatever other

official is the appropriate official to go to, I believe you will get the help that you need. I also believe, based on Mr. Zerbo's testimony, that the Township should be very careful in searching out a competent revaluation company which will be able to deal with the extraordinary problems. I suggest to you, and I can't say for sure, I suggest to you that the building of the racetrack, the valuation of the racetrack itself is going to be difficult, the building of the racetrack will create all kinds of valuation problems. And those valuation problems can, should and can be dealt with. All right, I will return to Mr. Haushalter all of his exhibits following the conclusion of this hearing, when I have finished marking them completely and properly. All right, gentlement, thank you.

MR. HAUSHALTER: Thank you, Judge.

MR. SEGAL: Thank you, Your Honor.

* * * * * * * * * * * * *

STATE OF NEW JERSEY

SS

COUNTY OF CAMDEN

I, MARYANN WOODS, for GCI TRANSCRIPTION AND RECORDING SERVICES, do swear that the foregoing is a true and accurate transcript of the proceedings held in the matter of **CHERRY HILL TOWNSHIP VS. CAMDEN COUNTY BOARD OF TAXATION,** heard **July 29 and 30, 1985** in the **TAX COURT OF NEW JERSEY** and recorded on **Cassettes #8-85, Index #0010 to #3125; #9-85, Index #0010 to #3000; #10-85, Index #0001 to #2659** (July 29); and **Cassettes #82-85, Index #0010 to #3285; and #83-85, Index #0001 to #0609** of that Court on those dates.

_____

MARYANN WOODS
for

GCI Transcription and Recording Services

Date: _____

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-470-85T1

CHERRY HILL TOWNSHIP,

Plaintiff-Appellant,

v.

CAMDEN COUNTY BOARD OF TAXATION

Defendant-Respondent.

Submitted September 29, 1986 - Decided

Before Judges Gaynor and Scalera.

On appeal from the Tax Court of New Jersey.

Matthew Eric Segal, attorney for appellant.

W. Cary Edwards, Attorney General of New Jersey, attorney for respondent (Michael R. Clancy, Deputy Attorney General, of counsel; Harry Haushalter, Deputy Attorney General, on the brief).

PER CURIAM

The Township of Cherry Hill appeals from the judgment of the Tax Court affirming the order of the Camden County Tax Board directing the township to proceed with a revaluation effective for the tax year 1987. It is contended that sufficient, competent evidence was presented to overcome the presumption of correctness of the County Board's order. We disagree and affirm.

In advancing this appellate argument, the township relies

upon the trial testimony offered by its expert witness, the township tax assessor. He opined that a revaluation at this time would be meaningless in view of the likely effect that the recent reconstruction of the Garden State Race Track would have on property values in the township in the near future. The ordered revaluation was also considered unnecessary as the township had not adopted any zoning changes within the past ten years and the its present coefficient of deviation was indicative of only a marginally disparate assessment pattern. It was further suggested there were no appraisal firms with the required expertise available to perform an acceptable revaluation and it would be unreasonable for the taxpayers to be put to the cost of a revaluation which would have minor and inconsequential results.

Our review of the record convinces us the municipality failed to meet its burden of overcoming the presumption of validity that attached to the order requiring the revaluation for the 1987 tax year. We find no merit in the arguments advanced by the township on this appeal and concur in the trial judge's conclusion that the county board's order was proper and valid. The judgment of the Tax Court entered August 8, 1985 is therefore affirmed substantially for the reasons expressed by Judge Rimm in his oral opinion of July 30, 1985.

Affirmed.

SUPREME COURT OF NEW JERSEY

C-974 September Term 1986

26,343

CHERRY HILL TOWNSHIP

Plaintiff-Petitioner,

vs. ON PETITION FOR CERTIFICATION

CAMDEN COUNTY BOARD OF TAXATION,

Defendant-Respondent

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-470-85T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, the 28th day of May, 1987.

CLERK OF THE SUPREME COURT

Supreme Court of the United States

A-137

No.

CHERRY HILL TOWNSHIP,

Applicant,

v.

CAMDEN COUNTY BOARD OF TAXATION

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and include October 26, 1987.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme
Court of the United States

Dated this 18th
day of August, 1987

Order to Implement a Municipal-Wide Revaluation

IN THE MATTER OF THE

REVALUATION OF

Cherry Hill Township
820 Mercer Street
PO Box 5002
Cherry Hill, NJ 08034

Order To Implement a Municipal-Wide Revaluation

TO: The Tax Assessor, Mayor and Members of the governing body and all other responsible officials of

WHEREAS, the Camden County Board of Taxation, pursuant to **N.J.S.A.** 54:4-2.27, adopted the percentage level of taxable value of real property for the County of Camden of 100 per cent of true value;

WHEREAS, the Camden County Board of Taxation, pursuant to its statutory duty to revise, correct and equalize the assessed value of all property in the respective taxing districts (**N.J.S.A.** 54:4-47), has determined that the assessment of the Township of Cherry Hill result in an unequal distribution of the tax burden within said municipality;

WHEREAS, pursuant to **N.J.S.A.** 54:3-13, the Camden

County Board of taxation has the responsibility to secure the taxation of all property within Camden County at its taxable value in order that all property, except by law, shall bear its full, equal and just share of taxes;

WHEREAS, it is the regular policy of the Camden County Board of Taxation to review the measurements of uniformity and accuracy of assessments of each taxing district within Camden County in accordance with the standards of N.J.A.C. 18:12A-1.14 to assure the proper distribution of the local property tax burden in each municipality;

WHEREAS the ratio of assessed value to true value for the Township of Cherry Hill is 57.90% and the general coefficient of deviation for the Township of Cherry Hill is 15.09%;

WHEREAS, this statistical pattern reflects an assessment pattern for the Township of Cherry Hill which lacks uniformity and which does not conform to the assessment standard of 100% of true value established by the Camden County Board of Taxation.

It is Ordered on this 6th day of February, 1985 that:

1. Cherry Hill Township and its tax assessor shall implement a municipal-wide revaluation to be completed by September 30, 1986 and to be effective for the 1987 tax year.

2. The tax assessor for the Township of Cherry Hill shall, within 60 days from the date of the approval of this order by the Director of the Division of Taxation, submit a proposed

plan for compliance with this revaluation order. The plan shall indicate whether the municipality proposes to enter into a contract with a qualified revaluation firm for the purposes of accomplishing revaluation of all Taxable real property within the municipality pursuant to **N.J.S.A.** 54:1-35.36 and shall further indicate the date upon which it proposes to begin implementation of the program and the time estimated to be required for completion of the revaluation.

3. The governing body of the Township of Cherry Hill shall take all necessary action to enter into a contract for a revaluation in accordance with the Local Public Contracts Law, **N.J.S.A.** 40:11-1 **et seq.,** and the Local Budget Law, **N.J.S.A.** 40A:4-1 **et. seq.,** including, but not limited to, the preparation of the revaluation contract and the appropriation of the monies to fund the revaluation contract.

4. The procedure to be utilized by the municipality in awarding the revaluation contract to a revaluation firm shall be made pursuant to the provisions of the Local Public Contracts Law, **N.J.S.A.** 40:11-1 **et. seq.,** and the Local Budget Law, **N.J.S.A.** 40A4-1 **et. seq.,** and shall not be delayed as a result of the municipality's utilization of either the public bidding or other available procedure for purposes of securing a qualified revaluation firm.

5. The governing body of the Township of Cherry Hill shall prepare the necessary specifications for the revaluation

contract and submit a copy thereof to the County Board of Taxation. The specifications shall conform to the applicable provisions of law and the standards adopted by the Director, Division of Taxation, as reflected in **N.J.A.C.** 18:12-4-1 **et. seq.** and in the **Real Property Appraisal for New Jersey Assessors.** All Income producing Property must be reassessed using all three approaches to value.

6. The Township of Cherry Hill, following the awarding of the revaluation contract, shall submit the proposed revaluation contract to the Director, Division of Taxation, for his review and approval pursuant to the provisions of **N.J.S.A.** 54:1-35.36 and shall submit a copy of the revaluation contract to the Camden County Board of Taxation.

7. The tax assessor of Cherry Hill Township shall submit written reports on the first day of each month during the implementation of the revaluation program to the Camden County Board of Taxation. The reports shall set forth specifically the progress and status of the revaluation of all property in the Township of Cherry Hill, including the precise nature of the program adopted to accomplish the revaluation, the amount of monies appropriated and expended therefor, the nature and status of any municipal ordinance or resolution introduced by the municipal governing body relating to the revaluation program and the funding therefor, the number of line items completed and left to be completed in connection with the

revaluation and the amount of time needed to complete each phase of the revaluation.

8. The municipality shall submit its tax map to the Director, Division of Taxation in accordance with **N.J.A.C.** 18:12-4.7 within 30 days of the date of this order. In the event the Director determines that the tax map is not up-to-date, the municipality shall take all necessary steps to update the tax map in accordance with the instructions issued by the Director.

9. The revaluation firm shall perform the revaluation on behalf of and as an agent of the tax assessor and the tax assessor shall be responsible for monitoring all phases of the revaluation work to insure the proper implementation of the revaluation program.

COUNTY BOARD OF TAXATION

_____

Victor T. Kolton, President

_____

Benjamin G. Vukicevich, Commissioner

_____

Joseph J. Grassi, Commissioner

_____

_____

Attest:_____
Tax Administrator,
Camden County Board of
Taxation

In accordance with **N.J.S.A.** 54:1-35.36, the within order is hereby approved.

_____

John R. Baldwin
Director, Division of Taxation
Department of the Treasury
State of New Jersey

Dated: March 18, 1985

THE U.S. CONSTITUTION

AMENDMENT XIV (1868)

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

COUNTY	MUNICIPALITY AND YEAR	GENERAL COEFFICIENT	** COEFFICIENTS OF DEVIATION ** STRATIFIED BY CLASS 1	2	4	SEGMENTED BY CLASS 1	2	4	NUMBER OF SALES BY CLASS 1	2	4	TOTAL
CAMDEN COUNTY												
AUDUBON BORO	1985	17.13	14.89	15.86	19.25	15.57	16.14	25.64	5	141	17	163
	1984	16.40	22.65	14.00	23.12	20.24	14.30	33.66	2	127	15	144
	1983	17.58	6.81	15.03	18.73	7.59	15.76	39.87	3	106	10	119
	1982	14.91	21.30	14.46	6.56	24.05	14.52	16.69	3	85	3	91
AUDUBON PARK BORO	1985											
	1984											
	1983											
	1982											
BARRINGTON BORO	1985	16.92	15.70	13.49	27.62	46.51	13.64	37.52	3	77	8	88
	1984	16.00		16.26	4.03	15.84	16.22	7.63	1	74	2	77
	1983	17.76		14.58	15.40		14.73	90.58		48	2	50
	1982	20.79		19.05		67.79	19.56		1	38		39
BELLMAWR BORO	1985	16.64	20.74	12.10	31.84	70.54	12.71	31.87	5	92	6	103
	1984	11.88		11.22		36.72	11.23	56.46	1	106	1	108
	1983	13.96	21.39	12.47	14.01	21.79	12.76	34.42	4	77	3	84
	1982	12.63	7.78	12.49	25.10	7.66	12.48	27.10	4	64	2	70
BERLIN BORO	1985	14.19	14.54	13.39	22.66	14.53	13.38	21.97	6	51	5	62
	1984	12.90	25.54	11.65	8.30	27.56	11.54	9.05	5	48	2	55
	1983	11.61		10.63	19.11		10.76	26.53		35	2	37
	1982	11.86		11.86			11.86			30		30
BERLIN TWP	1985	10.65	*0.13	9.71	21.26	15.57	9.57	19.41	4	51	4	59
	1984	12.88	34.23	11.27		52.95	11.43	11.20	2	54	1	57
	1983	15.22		11.15	40.43		12.15	67.48		34	2	36
	1982	13.47		11.89			11.93	72.05		38	1	39
BROOKLAWN BORO	1985	11.30		11.30			11.30			12		12
	1984	12.49		10.11	23.13		10.96	29.30		22	2	24
	1983	18.20		18.20			18.20			3		3
	1982	13.87		13.87			13.87			12		12
CAMDEN CITY	1985	56.35	53.59	57.28	42.56	55.91	56.88	51.16	4	727	73	804
	1984	55.14	40.50	55.09	38.22	53.74	54.69	62.84	8	857	52	917
	1983	52.61	51.96	52.54	39.07	92.82	52.24	57.18	3	596	24	623
	1982	54.46	11.74	54.06	50.09	43.89	53.68	64.91	5	693	56	754

COUNTY	MUNICIPALITY AND YEAR	GENERAL COEFFICIENT	** COEFFICIENTS OF DEVIATION ** STRATIFIED BY CLASS 1	2	4	SEGMENTED BY CLASS 1	2	4	NUMBER OF SALES BY CLASS 1	2	4	TOTAL
CAMDEN COUNTY												
CHERRY HILL BORO												
	1985	12.70	24.02	11.34	22.46	28.05	11.32	28.78	45	895	33	973
	1984	15.09	24.84	14.14	15.84	27.81	14.18	26.45	53	1016	22	1091
	1983	14.09	26.50	12.02	24.36	29.84	12.13	55.38	39	608	14	661
	1982	15.26	17.75	13.98	25.26	28.77	14.18	35.21	28	548	11	587
CHESILHURST BORO												
	1985	55.43		23.64		193.99	32.33		1	6		7
	1984	13.67		10.03		60.42	10.07		1	13		14
	1983	14.91		8.23		18.63	12.41		2	3		5
	1982	19.84	26.35	11.65		37.51	13.22		3	8		11
CLEMENTON BORO												
	1985	20.53	45.54	16.77	.43	55.16	17.26	15.77	7	70	3	80
	1984	16.90	13.92	15.36	27.03	17.56	15.54	37.97	3	94	6	103
	1983	19.39	2.90	16.12	31.06	84.40	16.40	39.89	2	57	2	61
	1982	17.80	9.10	17.34	1.47	19.72	17.24	34.79	2	68	2	72
COLLINGSWOOD BORO												
	1985	13.70	12.48	13.39	15.29	13.40	13.48	16.43	2	155	13	170
	1984	11.76	8.80	11.10	14.94	8.61	11.12	20.07	2	184	15	201
	1983	10.12		9.49	14.90		9.54	17.68		39	3	42
	1982	18.57	11.52	16.73	28.06	15.39	16.96	32.57	2	125	15	142
GIBBSBORO BORO												
	1985	14.72	11.11	10.99		50.05	11.12	19.39	2	21	1	24
	1984	16.04		16.04			16.04			36		36
	1983	21.67		21.42			21.67	21.53		18	1	19
	1982	19.96		17.80		46.28	18.32		1	16		17
GLOUCESTER CITY												
	1985	26.41	30.57	23.84	32.79	31.17	24.06	46.87	5	124	13	142
	1984	22.92		22.80	26.05	26.60	22.80	26.05	1	105	3	109
	1983	20.91		20.69	18.42		20.65	23.92		94	8	102
	1982	24.27	21.67	24.76	17.71	19.35	24.75	22.03	4	85	9	98
GLOUCESTER TWP												
	1985	13.35	29.26	11.32	29.51	38.90	11.54	35.25	28	506	9	543
	1984	11.35	27.86	10.35	19.56	31.47	10.38	36.61	22	541	3	566
	1983	14.01	33.26	12.35	25.89	43.87	12.45	24.57	18	371	4	393
	1982	13.94	32.65	10.97	29.82	43.13	11.24	37.15	20	329	13	362
HADDON TWP												
	1985	13.76	34.71	11.85	17.70	57.58	11.95	33.88	3	173	9	185
	1984	13.57	26.72	12.80	23.40	27.29	12.80	25.82	3	164	7	174
	1983	16.40		13.78	19.54	7.08	14.02	50.28	1	124	9	134
	1982	15.52	21.98	13.17	15.46	26.31	13.39	54.71	2	102	5	109

COUNTY	MUNICIPALITY AND YEAR	GENERAL COEFFICIENT	** COEFFICIENTS OF DEVIATION ** STRATIFIED BY CLASS 1	2	4	SEGMENTED BY CLASS 1	2	4	NUMBER OF SALES BY CLASS 1	2	4	TOTAL
CAMDEN COUNTY												
HADDONFIELD BORO												
	1985	13.50		13.58	11.74		13.59	11.31		195	8	203
	1984	12.67		12.40	19.57	10.65	12.41	20.00	1	214	8	223
	1983	10.63		10.00	18.86		10.15	18.25		64	4	68
	1982	16.22		15.83	23.01		15.78	26.06		128	6	134
HADDON HEIGHTS BORO												
	1985	16.33		15.67	24.01		15.68	24.02		96	8	104
	1984	14.01		13.32	16.50	10.46	13.30	25.40	1	108	7	116
	1983	12.87		11.79	19.21	32.00	11..95	19.22	1	55	5	61
	1982	11.34		11.64	5.55		11.65	7.71		48	4	52
HI NELLA BORO												
	1985											
	1984	10.80		10.80			10.80			4		4
	1983	7.47		7.47			7.47			4		4
	1982	12.47		12.47			12.47			2		2
LAUREL SPRINGS BORO												
	1985	14.18		13.26	19.03		13.34	22.20		19	2	21
	1984	19.23		7.53			12.09	104.96		12	1	13
	1983	12.78		11.25			10.55	37.33		11	1	12
	1982	8.95		8.95			8.95			6		6
LAWNSIDE BORO												
	1985	25.97	15.57	26.02		23.83	26.21		2	18		20
	1984	26.67		25.03		31.94	26.14		1	10		11
	1983	27.38		27.38			27.38			8		8
	1982	17.57		17.57			17.57			9		9
LINDENWOLD BORO												
	1985	9.33		9.54	.27		9.54	.90		84	2	86
	1984	11.54	18.78	10.65	44.14	20.14	10.66	47.96	7	191	3	201
	1983	12.76	22.78	12.28	15.11	21.10	12.28	15.99	6	130	4	140
	1982	14.42	70.17	12.23	23.38	61.00	12.38	23.96	5	128	3	136
MAGNOLIA BORO												
	1985	17.69	17.75	17.71	4.42	19.52	17.84	9.04	5	52	2	59
	1984	15.31		14.88		28.12	15.02		1	43		44
	1983	17.24	12.02	16.49		21.04	16.77		4	33		37
	1982	16.55		16.55			16.55			33		33
MERCHANTVILLE BORO												
	1985	14.52		13.76	14.39		13.79	18.95		49	8	57
	1984	10.53		10.87			10.86	.67		29	1	30
	1983	19.78		14.83	26.19		15.52	45.35		36	6	42
	1982	14.76		16.17	3.75		16.16	3.50		32	4	36

COUNTY	MUNICIPALITY AND YEAR	GENERAL COEFFICIENT	* * COEFFICIENTS OF DEVIATION * * STRATIFIED BY CLASS 1	2	4	SEGMENTED BY CLASS 1	2	4	NUMBER OF SALES BY CLASS 1	2	4	TOTAL
CAMDEN COUNTY												
MOUNT EPHRAIM BORO												
	1985	24.14	6.31	20.82	19.61	100.75	21.31	25.27	2	56	5	63
	1984	15.42	28.20	14.45	13.48	29.21	14.43	18.18	3	62	7	72
	1983	14.39		14.06	6.94	32.50	14.08	12.76	1	45	3	49
	1982	12.63		11.65	14.58		11.79	24.68		43	3	46
OAKLYN BORO												
	1985	13.70		13.20	12.96	41.23	13.18	12.93	1	42	7	50
	1984	17.91	15.21	14.08	18.16	32.92	13.91	39.55	3	49	7	59
	1983	14.07		13.29	6.41	27.88	13.22	19.71	1	43	4	48
	1982	17.80		18.40	6.04		18.47	6.39		34	2	36
PENNSAUKEN TWP												
	1985	16.37	27.98	13.95	25.47	33.33	14.11	48.05	12	483	28	523
	1984	15.97	36.46	14.36	17.77	36.69	14.46	33.54	17	455	19	491
	1983	16.61	30.18	14.84	24.28	32.81	15.05	39.33	14	335	13	362
	1982	16.63	30.60	14.17	25.98	39.31	14.51	43.78	7	268	15	290
PINE HILL BORO												
	1985	19.41	26.54	18.01		28.61	17.74	51.89	15	102	1	118
	1984	16.08	16.16	16.17	13.37	15.17	16.21	14.30	13	109	2	124
	1983	15.54	21.16	13.89		24.08	13.82	58.51	11	79	1	91
	1982	19.78	24.94	18.84		25.69	18.67	16.09	14	71	1	86
PINE VALLEY BORO												
	1985											
	1984											
	1983											
	1982											
RUNNEMEDE BORO												
	1985	15.50	62.61	14.09	19.82	48.75	14.07	20.52	2	77	9	88
	1984	14.08	13.87	13.55	14.36	13.06	13.62	26.44	3	74	3	80
	1983	16.66	10.90	13.78	23.25	33.46	14.65	28.46	2	52	6	60
	1982	14.46		12.95	5.36	68.04	13.01	17.96	1	49	5	55
SOMERDALE BORO												
	1985	17.31	26.52	14.57	20.17	26.97	14.47	27.77	6	50	8	64
	1984	24.81	52.74	15.67	27.95	52.53	15.47	49.85	4	36	9	49
	1983	18.55	12.40	17.20	10.65	19.62	17.11	31.96	3	30	3	36
	1982	16.82		14.98	21.49	9.67	14.76	31.94	1	26	4	31
STRATFORD BORO												
	1985	15.10	1.66	11.95		110.49	12.73	.37	2	74	1	77
	1984	10.99		10.64			10.64	41.16		85	1	86
	1983	10.34		9.58	24.84		9.66	32.53		66	2	68
	1982	8.95		7.80	1.54		7.87	37.80		53	2	55

COUNTY	MUNICIPALITY AND YEAR	GENERAL COEFFICIENT	* * COEFFICIENTS OF DEVIATION * * STRATIFIED BY CLASS 1	2	4	SEGMENTED BY CLASS 1	2	4	NUMBER OF SALES BY CLASS 1	2	4	TOTAL
CAMDEN COUNTY												
TAVISTOCK BORO												
	1985											
	1984											
	1983											
	1982											
VOORHEES TWP												
	1985	18.28	42.57	12.55	21.70	41.82	12.93	21.86	56	252	10	318
	1984	13.79	29.70	12.05	10.20	30.06	12.23	26.35	23	311	9	343
	1983	16.48	24.86	13.01	28.67	26.77	13.41	28.59	36	145	6	187
	1982	15.93	36.51	12.46	13.45	32.32	12.88	14.24	18	94	4	116
WATERFORD TWP												
	1985	14.91	18.83	12.70		33.23	13.29		9	102		111
	1984	13.54	22.53	11.38	16.35	34.93	11.83	26.49	6	105	4	115
	1983	14.00	10.72	13.19	4.85	29.38	13.43	10.49	3	61	3	67
	1982	18.68	23.60	9.89		53.04	13.08		7	43		50
WINSLOW TWP												
	1985	14.21	35.73	11.53	6.01	67.78	11.73	40.67	10	238	2	250
	1984	15.25	44.09	12.78	2.90	69.90	13.27	104.96	5	227	2	234
	1983	15.87	13.88	13.03		57.74	13.53	121.64	5	135	1	141
	1982	13.45	16.91	12.69		26.09	12.73	71.07	5	168	1	174
WOODLYNNE BORO												
	1985											
	1984	17.60		17.60			17.60			54		54
	1983	28.34		20.43		239.98	21.81	51.86	1	36	1	38
	1982	19.36		19.36			19.63			29		29

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1225

In The
Supreme Court of the United States
October Term, 1987

CHERRY HILL TOWNSHIP,
Petitioner,

v.

CAMDEN COUNTY BOARD OF TAXATION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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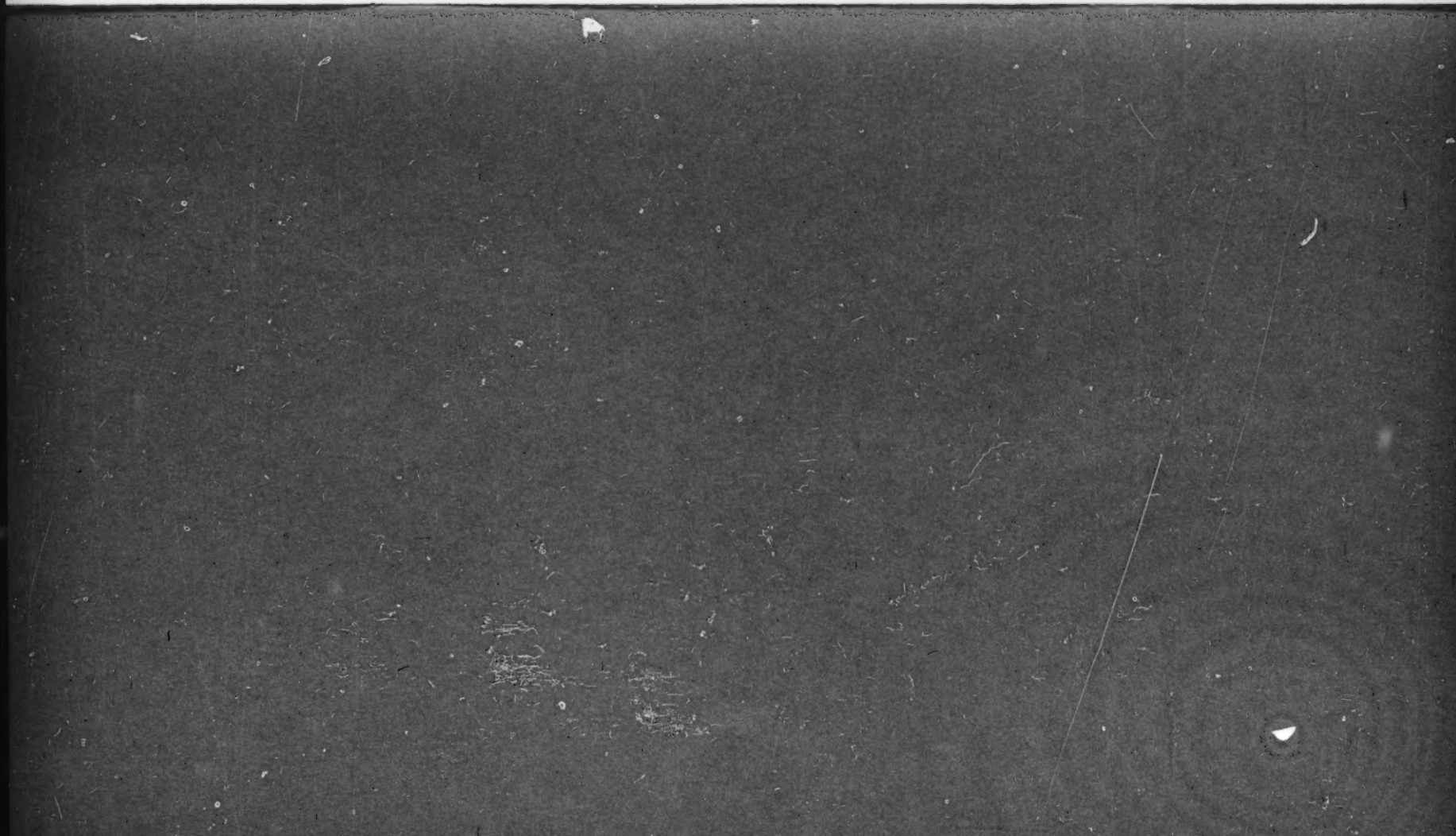

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COUNTERSTATEMENT OF THE CASE

Petitioner, the Township of Cherry Hill ("Cherry Hill") in the State of New Jersey, is seeking, by writ of *certiorari,* to have this Court review a decision by the New Jersey Superior Court, Appellate Division, which the Supreme Court of New Jersey refused to review. The New Jersey Appellate Division affirmed a trial court judgment requiring Cherry Hill to implement a municipal-wide revaluation of its real property under the Local Property Tax Law, *New Jersey Stat. Ann.* ("*N.J.S.A.*") 54:4-1 *et seq.* Cherry Hill has never questioned the validity of the challenged revaluation order on federal or state constitutional grounds. Therefore, neither the trial court nor the Appellate Division ever addressed constitutional challenges to the need for Cherry Hill to revalue its real property for tax purposes.

The respondent is the Camden County Board of Taxation which issued an order, dated February 6, 1985, requiring Cherry Hill to implement a municipal-wide revaluation of real property for the 1987 tax year. The revaluation order was approved by the Director of the New Jersey Division of Taxation, on March 18, 1985. Cherry Hill filed a complaint in the Tax Court of New Jersey on April 23, 1985 challenging the revaluation order. The matter was tried on July 29 and 30, 1985 resulting in an oral decision by the tax court judge affirming the revaluation order.

The trial judge noted that Cherry Hill objected to the revaluation on two grounds: first, that the general coeffi-

cient of deviation* was only minimally above the 15% standard of deviation classified as reflective of a disparate assessment pattern; and second, that no revaluation firm could establish, by means of a revaluation program, an assessment pattern that would be more than marginally improved over the existing assessments. The trial judge found the record to reflect that the general co-efficient of deviation was only one of many factors to be considered in gauging the need for a revaluation in a taxing district. He determined that the coefficient data, standing by itself, supported the need for a revaluation in Cherry Hill. Furthermore, the judge held that the general and class ratios for properties in Cherry Hill were reflective of a poor and outdated assessment pattern. He found that the assessments had essentially remained the same for a large portion of the properties since the last revaluation had been implemented for Cherry Hill in 1975. The judge rejected Cherry Hill's claim that a revaluation would not improve the poor assessments for that municipality, since no facts were introduced to support that contention. A judgment was entered on August 8, 1985 affirming the revaluation order.

Cherry Hill filed a notice of appeal on October 1, 1985 from the whole of the judgment with the New Jersey Appellate Division. The Appellate Division, in an opinion dated October 9, 1986, affirmed the trial court, finding no merit in the municipality's arguments and no factual basis

---

* The general coefficient of deviation is a statistical tool developed by the New Jersey Division of Taxation to measure the average deviation of assessments from the common level of assessments. A coefficient of 15% or higher is reflective of a significant level of nonuniformity in a municipality's assessment pattern.

for disagreeing with the trial court judgment. Cherry Hill filed a petition for certification seeking review of the entire Appellate Division judgment with the Supreme Court of New Jersey. The latter court declined to review this matter further in an order dated May 29, 1987.

ARGUMENT

SINCE THE FEDERAL EQUAL PROTECTION ISSUE CHALLENGING THE REVALUATION ORDER WAS NEVER RAISED BELOW, THE PETITION FOR CERTIORARI DOES NOT PRESENT A PROPER FEDERAL CONSTITUTIONAL ISSUE AND SHOULD BE DENIED.

This Court has consistently held that it will intervene in the state judicial process only to correct wrongs of a federal constitutional dimension and not to interfere with issues that are a matter of state constitutional, statutory or common law. *Smith v. Phillips*, 455 *U.S.* 209, 221 (1982). In evaluating issues concerning state law, a federal court should defer to the determinations by the state court particularly if the state court decision was primarily factually based. *Kolender v. Lawson*, 461 *U.S.* 352, 355 (1983). As noted, Cherry Hill never raised a federal constitutional question below and, in fact, never presented any proofs relating to the constitutional challenge raised in this proceeding.*

---

* It is not even clear as a matter of New Jersey state law as to whether Cherry Hill has the appropriate standing to raise the constitutional issue since the municipality is a creature of the

(Continued on following page)

Nevertheless, in light of this petition having been filed, it is appropriate to place the revaluation order being challenged in the proper legal context. The county boards of taxation,* as agents of the New Jersey Legislature, have the responsibility of implementing the state constitutional directive concerning the taxation of real property:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district. [*N.J. Const.* (1947), Art. VIII, § I, par. 1(a)]

This constitutional standard requires that assessments under the Local Property Tax Law, *N.J.S.A.* 54:4-1 *et seq.*, must be based upon general laws and uniform rules to secure fairness in the taxing scheme. *Switz v. Kingsley*, 37 *N.J.* 566, 572, 182 *A.*2d 841, 850 (1962). In accordance with this constitutional instruction, the New Jersey Legislature has charged that each county board shall:

(Continued from previous page)

state. *See McKenny v. Byrne* 82 *N.J.* 304, 315, 412 *A.*2d 1041, 1049 (1980). However, because Cherry Hill's constitutional argument is only now being raised, the New Jersey courts have not had an opportunity to consider Cherry Hill's standing to raise the constitutional issue.

* County boards of taxation are state agencies which exercise administrative authority on a county-wide basis regarding the local property tax system. *N.J.S.A.* 54:3-1 *et seq.* A separate county board of taxation sits in each of New Jersey's 21 counties. *N.J.S.A.* 54:3-2.

> . . . secure the taxation of all property in the county at its taxable value as prescribed by law, in order that all property, except such as shall be exempt by law, shall bear its full and just share of taxes. [*N.J.S.A.* 54:3-13];
>
> . . . issue such directions as may be necessary to carry into effect the provision of this title. [*N.J.S.A.* 54:3-14];
>
> . . . have supervision and control over all officers charged with the duty of making assessments for taxes in every taxing district in the county. Such officers shall be subject to, and shall, in making assessments, be governed by such rules, orders or directions as may be issued by the county board, in the enforcement of the objects of this title [*N.J.S.A.* 54:3-16].

In addition, the Legislature has conferred upon the boards comprehensive authority to:

> . . . revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property not valued at its taxable value, less property omitted from any assessment, as provided by law, at its taxable value, and in general do everything necessary for the taxation of all property in the county at its taxable value. [*N.J.S.A.* 54:4-47].

Since the first judicial directive requiring valuations to correct inequities of assessment practices in *Switz v. Middletown Twp.*, 23 *N.J.* 580, 130 *A.*2d 15 (1957), the New Jersey judiciary has consistently sustained the authority of the county boards to direct municipalities to implement programs of revaluation. In *Switz*, where a property owner prevailed in an action in lieu of mandamus to compel reassessment against the municipality in which the property was located, and in *Ridgefield Park v.*

Bergen County Board of Taxation, 31 *N.J.* 420, 157 *A.*2d 829 (1960), app. dism. 365 *U.S.* 648 (1961), where a municipality and several of its taxpayers were allowed to maintain a similar action against other municipalities within the county, county boards were joined as defendants. In neither case, however, did the New Jersey courts regard the county boards, which are essentially supervisory bodies with respect to the proper maintenance of assessment rolls, as the appropriate agencies to conduct municipal revaluations. That responsibility rested with the municipalities and their assessors:

> In *Switz* it was noted that basically the problem in many, if not most, of the municipalities was that the assessment rolls were out of hand and hence nothing short of municipal-wide revaluations would bring order out of chaos; that the county board had neither the time nor the funds for so massive an effort; and that accordingly a judgment directing it to perform the basic duties of the assessors would be unwarranted. We expressed our confidence that if the local assessors did their job, the county board would not fail in its assigned role. We have no reason to feel differently about the county board in the present case. [*Ridgefield Park v. Bergen County Board of Taxation, supra*, 31 *N.J.* at 432, 157 *A.*2d at 835].

Switz and *Ridgefield Park* were comparatively early cases in the continuing history of the efforts to secure assessments at full taxable value as prescribed by the New Jersey Constitution and statutes and to eliminate inequities caused by the failure of municipalities to do so voluntarily. The law is not self-executing and the county boards are frequently confronted with municipalities that are unwilling to implement revaluations. In these circumstances, a county board has no recourse, if it is to execute its constitutional and statutory mandate, but to

order a lax municipality to revalue and, if the order is disregarded, to seek enforcement of the law by judicial compulsion. The New Jersey courts have sustained the authority of a county board to order a revaluation and, where necessaary, to seek its enforcement by court action. *Essex County Board of Taxation v. Newark*, 73 *N.J.* 69, 372 *A.*2d 607 (1977).

The revaluation order issued by the Camden County Board of Taxation and directed at Cherry Hill was thus consistent with well-settled New Jersey law. It stems from a recognition that the direct responsibility for the maintenance of assessments at the prescribed level of full value rests with the municipal tax assessor. *N.J.S.A.* 54:4-23. It is when the municipal assessor is unable or unwilling to correct widespread deficiencies that the county board orders general revaluation, but then only in accordance with established guidelines and only upon approval by the New Jersey Director of the Division of Taxation.

A municipality's avenue of appeal from a board's order to revalue is clearly established:

> Certainly a municipality is entitled at some point to be heard as to whether the order of the Board seeking to compel revaluation is proper. Such an opportunity is available by direct appeal from the order of the particular county board of taxation to the Division of Tax Appeals. *N.J.S.A.* 54:2-35. In this case, as is set forth above, the taxing districts were given ample opportunity to present facts and arguments before the Division of Tax Appeals. That they chose to forego this opportunity cannot now afford them a basis for complaining that they have not been heard. [*Bergen County Board of Taxation v. Bogota*, 114

N.J. Super 140, 146, 275 *A.*2d 158, 161 (App. Div. 1971)].

Since the *Bogota* decision, the Tax Court of New Jersey was created and assumed the jurisdiction formerly exercised by the Division of Tax Appeals as of July 1, 1979. *See N.J.S.A.* 2A:3A-1 *et seq.* Cherry Hill exercised its right of appeal to challenge the revaluation order before the Tax Court of New Jersey and was unsuccessful. Cherry Hill simply failed to present a cogent record reflecting the impropriety of the revaluation order. The proceedings in the New Jersey courts involved strictly the factual question as to whether the local property assessments existing in Cherry Hill needed to be revalued on a municipal-wide basis. The factual record involved various statistical data reflecting a convincing disparate assessment pattern requiring a revaluation.

Cherry Hill never raised any federal constitutional issue at the trial and appellate proceedings of this matter. The contention that the challenged revaluation order violated Cherry Hill's constitutional right to equal protection of the law is being raised for the first time in this proceeding. The New Jersey courts found ample evidence in the record warranting the implementation of the revaluation program based solely on a factual analysis of the record.

The record below thus reflected no disparity of treatment with regard to revaluations among other municipalities in Camden County as improperly alleged by the petitioner. There was no evidence presented that any taxing district in Camden County reflecting a more disparate assessment pattern was not in the process of having its real property revalued. There is clearly no factual record to

support any claim for unequal treatment. Moreover, the petition for certiorari ignores the fundamental deference to be paid to state taxing schemes under the Equal Protection Clause. *See Lehnhausen v. Lake Shore Auto Parts Co.*, 410 *U.S.* 356, 359 (1973); *Madden v. Kentucky*, 309 *U.S.* 83, 87-88 (1940). Thus, even if the equal protection issue had been properly raised below, it is an issue of no merit, having no factual or legal support warranting further review by this Court.

In summary, therefore, the petition is seeking further review of a lower appellate court decision dismissing an unsupported challenge to a local property tax revaluation order. The dismissal relates to a narrow factual issue under New Jersey law that does not implicate any federal constitutional standard. The petition for a writ of certiorari plainly does not raise a question of constitutional dimension which warrants the granting of such extraordinary relief. Since the decision by the New Jersey court below did not implicate any federal question, the petition should be denied.

———o———

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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